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SUBJECT: Thailand: Customs Valuation Issues

REF: A) KELLY/VAUGHN EMAIL 2/1/05 B) KELLY/VAUGHN EMAIL

1/22/05

-- (U) THE FOLLOWING MESSAGE IS SENSITIVE BUT UNCLASSIFIED  
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1. (SBU) Summary: On February 18, Embassy representatives met with the Customs Department's Mr. Watana U-Thasoonthorn, Director, Customs Procedures and Valuation Directorate. Noting that some customs officers continue to assign arbitrary values to data on carrier media (CD) imports, Watana agreed to resend instructions to the port customs bureaus that when no declared value for the data is listed, only the carrier media should be assessed customs duties. He explained there are no plans to adopt a GATT (General Agreement on Trade and Tariffs) decision that only carrier media should be assessed customs duties, but explained Royal Thai Government (RTG) practice is to continue to assess only the carrier media when no value for the data is listed. Econoff raised concerns that Thailand's practice of using the retail price of an automobile in the country of manufacture for valuation purposes is inconsistent with its WTO commitments. Watana countered that while this is true for customs valuation, it is permissible for determining a "test value." We welcome further information from Washington to arm us for continued dialogue with Customs on its auto valuation practices. End Summary.

2. (SBU) Econoff raised the issue of software valuation related in Ref A, noting that while Thai Customs has advised that its officers at the port of entry are prohibited from assessing tax and duties on software based on an arbitrary value (such as USD 20 per CD), reports are that this continues to happen. Director Watana explained that officers have been told to assess the carrier media (the physical CD) and the software or data on the CD separately, according to the values reflected on the invoice provided by the importer. He explained that the problem arises when the importer provides a value for the disc, but not for the software on the disc; Watana explained that in such a case the official is supposed to assess the carrier media alone. He said these instructions had been sent in a memo to the Customs Bureaus at the ports a year ago. Noting the continued difficulties importers experience, Watana promised to resend the memo to Customs port authorities.

3. (SBU) Addressing the longer-term issue of adopting the 1984 GATT (General Agreement on Trade and Tariffs) decision 4.1 on carrier media (which states that customs duties should be applied only to the value of the carrier media rather than the value of the "data or instructions" contained thereon), Watana clarified the Royal Thai Government (RTG) position. He said that the RTG had no plans to adopt decision 4.1 at this time, noting that there was no consensus among countries and that no other ASEAN country had formally adopted the GATT decision. However, he noted that while RTG policy was to continue to apply separate customs duties on the carrier media and the information it contained, that since there is currently no rational method to determine the value of the data when no value is reflected on the invoice, RTG practice in those instances is to assess duties only on the carrier media in keeping with decision 4.1.

4. (SBU) Econoff then broached the issue of Thailand's new guidelines in determining valuation for automobile imports when the customs officer has doubts about the declared price on the invoice. According to the new guidelines, the declared value is compared with the value of identical goods previously accepted by Customs (reference pricing). When the declared value is the same or higher than the previously accepted customs value within a 30-day period, the declared value is used as a customs value. Where value of identical or similar goods previously accepted by customs is not available or the declared value is lower than the previously accepted customs value within the 30-day period, the declared value will be compared with the test value.

15. (SBU) Watana explained that the test value is determined by a formula that utilizes the retail price in the manufacturing country. Econoff raised congressional concerns (ref B) that Article 7.2 (c) of the WTO Agreement on Customs Valuation expressly forbids reference for valuation purposes to the price in the country of exportation or manufacture. While Watana agreed that is the case for the customs valuation, he asserted that determining the "test value" by referencing the retail price in the manufacturing country is NOT prohibited by article 7.2.

16. (SBU) Comment: While the RTG continues to use GATT decision 4.1 on carrier media in practice, there are no plans to implement the legislative changes needed to formally adopt 4.1 as the government does not want to tie its hands should other countries determine a rational method to assess data contained on carrier media. Customs continues to assert that its auto valuation methodology is consistent with its WTO commitments. We welcome further evidence from Washington agencies to arm us in our discussions with Thai Customs on this issue. End Comment.

Boyce